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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,547	03/07/2001	Aurelia Maza	06640-148 US	4160

7590

06/03/2002

Patent Counsel
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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 06/03/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/800,547

Applicant(s)

MAZA ET AL.

Examiner

Carolyn A. Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Heteren (5,190,781) in view of Desrosier and further in view of Ross (5,632,596).

Van Heteren discloses the manufacture of a spoonable non-dairy cream. This product is made from a pre-mix, as shown in example 1, which is then homogenized in a single stage homogenizer to form a spoonable dressing for desserts. Claim 1 appears to differ in the inclusion of a rotor and a stator. Desrosier teaches that emulsions may be formed in a homogenizer or a colloid mill, depending upon the particle size desired in the emulsion (see pages 529-530). This reference also teaches that colloid mills typically have a rotor and a stator with adjustable openings, as required in claim 2. Ross teaches the rotor and stator that is used in the process (see page 7, line 12 for support of this assertion) and shows all of the various dimensions that are set forth in the independent and dependent claims. Ross also teaches that the rotor and stator of the claims is known for use in foods and emulsions (column 1, lines 5-14). It would have been obvious at the time the invention was made to utilize the rotor and stator of Ross in an edible emulsion, which is a spoonable dressing. Further it would have been obvious to prepare a pre-emulsion prior to emulsifying the food product in order to assist in providing a uniform final product.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross in view of Desrosier and further in view of Van Heteren.

Ross discloses the rotor and stator that is used in the process (see page 7, line 12 for support of this assertion) and shows all of the various dimensions that are set forth in the independent and dependent claims. Ross also discloses that the rotor and stator of the claims is known for use in foods and emulsions (column 1, lines 5-14). The claims appear to differ in the suggestion of the use of a pre mix prior to the processing of the emulsion into a dressing. Van Heteren teaches the manufacture of a spoonable non-dairy cream. This product is made from a pre-mix, as shown in example 1, which is then homogenized in a single stage homogenizer to form a spoonable dressing for desserts. Although the use of an emulsion unit with a rotor and stator are not specifically mentioned in Van Heteren, the alternative use of a colloid mill with a rotor and a stator in the manufacture of an emulsion is well known in the art as shown by Desrosier. Desrosier teaches that emulsions may be formed in a homogenizer or a colloid mill, depending upon the particle size desired in the emulsion (see pages 529-530). This reference also teaches that colloid mills typically have a rotor and a stator with adjustable openings, as required in claim 2. It would have been obvious at the time the invention was made to use a pre-mix in the formulation of the emulsion of Ross, particularly when given the insight of Van Heteren and Desrosier to edible emulsions with pre mixes. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A. Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7 am to 3:30pm.


The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310 or 703-872-9311 for after final responses.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


CAROLYN PADEN 5-21-02
PRIMARY EXAMINER
GROUP 1300-1761